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18 **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, LINDA KATEHI, RALPH J.**
19 **HEXTER, FRED WOOD & JOHN MEYER**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. 2:12-cv-00450 JAM EFB

STIPULATION FOR SETTLEMENT

ENOSH BAKER, DAVID BUSCHO,
ALYSON COOK, ADAM FETTERMAN,
SARENA GROSSJAN, DEANNA
JOHNSON, SOPHIA KAMRAN,
ELIZABETH LARA, IAN LEE, SOO LEE,
EVAN LOKER, THOMAS MATZAT,
DARREN NEWELL, CHARLES PARKER,
WILLIAM ROBERTS, FATIMA SBEIH,
EVKA WHALEY-MAYDA, KASE
WHEATLEY, EDWARD GEOFFREY
WILDANGER, NOAH WILEY, and
JORDAN WILHEIM,

Plaintiffs,

v.

LINDA KATEHI, Chancellor of the
University of California at Davis; RALPH J.
HEXTER, Provost and Executive Vice
Chancellor of the University of California at
Davis; FRED WOOD, Vice Chancellor for
Student Affairs at the University of California
at Davis; JOHN MEYER, Vice Chancellor of
Administration and Resource Management at
the University at California at Davis;
ANNETTE SPICUZZA, Chief of the
University of California at Davis Police
Department; JOHN PIKE, Lt. in the
University of California at Davis Police
Department; BARRY SWARTWOOD, Lt. in
the University of California at Davis Police
Department; ALEXANDER LEE, officer of
the University of California at Davis Police
Department; and DOES 2-50, officers of the
University of California at Davis Police
Department,

Defendants.

I. PARTIES

This Stipulation of Settlement dated as of September 26, 2012 (the “Stipulation”), is made
and entered into by and among the following parties (all collectively the “Parties”):

- 1 1) Named Plaintiffs Enosh Baker, David Buscho, Alyson Cook, Adam Fetterman,
2 Sarena Grossjan, Deanna Johnson, Sophia Kamran, Elizabeth Lara, Ian Lee, Soo
3 Lee, Evan Loker, Thomas Matzat, Darren Newell, Charles Parker, William
4 Roberts, Fatima Sbeih, Evka Whaley-Mayda, Kase Wheatley, Edward Geoffrey
5 Wildanger, Noah Wiley, and Jordan Wilhelm (collectively “Representative
6 Plaintiffs” or simply “Plaintiffs”) on behalf of themselves and each of the Class
7 Members, as defined below; and
8 2) The Regents of the University of California (the “Regents”), Defendant in
9 proposed Second Amended Complaint.

10 The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released
11 Claims (as defined below) on the terms and conditions set forth in this Stipulation, subject to the
12 approval of the Court.

13 **II. THE LITIGATION**

14 On February 22, 2012, Plaintiffs filed their initial Complaint in this Litigation. On July
15 20, 2012, Plaintiffs filed their First Amended Complaint (“Complaint”) naming as defendants
16 members of the University of California Administration Linda Katehi, Ralph J. Hexter, Fred
17 Wood and John Meyer; Chief of the University of California at Davis (“UC Davis”) Police
18 Department Annette Spicuzza; and UC Davis Police Department officers John Pike, Barry
19 Swartwood and Alexander Lee. The Complaint alleges nine separate claims for relief, all arising
20 out of an incident involving U.C. Davis campus police and demonstrators and observers on the
21 campus of the University of California, Davis, on the afternoon of Friday, November 18, 2011.
22 Plaintiffs allege, inter alia, that, as part of the broader Occupy Wall Street movement, they had set
23 up symbolic tents on an area of the campus known as the Quad in protest against university
24 privatization, tuition increases, and the treatment of demonstrators at the University of California,
25 Berkeley. On Friday, November 18, 2011, members of the UC Administration directed the
26 demonstrators to remove the tents be from the Quad by 3:00 p.m. At about 3:00 p.m., members
27 of the UC Davis Police Department declared the demonstration an unlawful assembly, ordered
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1 those assembled to disperse, and commenced to remove the tents from the Quad, arresting and
 2 pepper-spraying demonstrators, including Plaintiffs. Plaintiffs allege that they and others
 3 similarly situated were deprived of their civil rights under the First, Fourth, and Fourteenth
 4 Amendments of the U.S. Constitution by being subjected to unlawful arrest and/or excessive
 5 force (including pepper spray) by or at the direction of agents or employees of the Regents. The
 6 Complaint seeks compensatory, statutory, and punitive damages, declaratory and injunctive relief,
 7 plus attorneys' fees and costs. Plaintiffs believe that the evidence developed to date supports
 8 their position, and that their claims have legal and factual merit.

9 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

10 Defendants have denied and continue to deny each and all of the claims alleged by
 11 Plaintiffs in the Litigation. Defendants contend that they acted reasonably and in good faith to
 12 address legitimate health and safety risks associated with an unpermitted encampment on the
 13 Quad, and not out of any intent to suppress debate and protest, or to deprive Plaintiffs of their civil
 14 rights. Defendants contend that the arrests and use of force were a lawful response to the efforts of
 15 Plaintiffs and others to interfere with the UC Officer Defendants' performance of their lawful
 16 objectives of removing tents erected without permits in violation of University policy and
 17 removing arrestees from the Quad. Defendants believe that the evidence developed to date
 18 supports their position that they acted reasonably and with good intentions, without violating the
 19 rights of Plaintiffs or others, and that the Litigation is without merit.

20 **IV. MEDIATION AND SETTLEMENT**

21 On March 14, 2012, prior to the filing of responsive pleadings by any Defendants, the
 22 Parties then named in the Litigation entered into a Stipulation and Proposed Order for Extension of
 23 Time to Respond to the Complaint and Other Dates in order to permit the Parties to explore
 24 settlement. (Dckt. No. 10) The Court approved the stipulation. (Dckt. No. 13)

25 The Parties engaged The Hon. Raul Ramirez (Ret.) to serve as mediator. In preparation for
 26 the mediation, the Parties engaged in informal discovery, including the production of documents
 27 and the exchange of information. On August 15 and 16, 2012, the Parties engaged in mediation in
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1 Sacramento, California, with respect to the claims and defenses raised in the Litigation. As a
 2 result of the mediation, the Parties reached an agreement on a settlement of the Litigation, the
 3 terms and conditions of which are set forth in this Stipulation.

4 Both Plaintiffs and Defendants have taken into account the uncertainty and risks inherent
 5 in any litigation. Plaintiffs and Defendants have concluded that further conduct of the Litigation
 6 would be protracted and expensive, with no certainty as to the ultimate outcome, and that it is
 7 reasonable and desirable that the Litigation be fully and finally settled in the manner and upon the
 8 terms and conditions set forth in this Stipulation. Plaintiffs and their counsel believe that the
 9 settlement set forth in the Stipulation confers substantial benefits upon the Class, and that it is fair
 10 and reasonable. Based on their evaluation, Plaintiffs and their counsel have determined that the
 11 settlement set forth in the Stipulation is in the best interests of the Class.

12 **TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

13 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
 14 Plaintiffs (for themselves and the Class Members, as defined below) and the Defendants, by and
 15 through their respective counsel or attorneys of record, that, subject to the approval of the Court,
 16 the Litigation and the Released Claims (as defined below) shall be finally and fully compromised,
 17 settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling
 18 Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

19 **1. Additional Definitions**

20 In addition to the definitions of the Parties set forth in Section I above, the following terms
 21 as used in this Stipulation have the meanings specified below:

22 1.1 “Administrator” means a committee comprised of one individual designated by the
 23 Plaintiffs and one individual designated by the Regents.

24 1.2 “Approved Claim” means a claim submitted no later than the Bar Date by a Class
 25 Member other than a Representative Plaintiff which is approved by the
 26 Administrator.

27 1.3 “Bar Date” means that date specified herein by which Claim Forms submitted by
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Class Members must be delivered or post-marked in order to be considered for payment pursuant to the terms of the settlement described in this Stipulation.

1.4 “Claim Form” means that form, substantially in the form attached hereto as **Exhibit A**, which Class Members must submit in order to qualify to participate in the settlement described in this Stipulation

1.5 “Class” or “Settlement Class,” as defined in the proposed Second Amended Complaint, means all persons (other than those persons who timely and validly request exclusion from the Class) who, on the afternoon of November 18, 2011, while participating in a protest on the University of California at Davis Quad, were arrested and/or directly sprayed with pepper spray by a campus police officer.

1.6 “Class Member” means a person who falls within the definition of the Class as set forth in section 1.5 above and who does not validly and timely opt out of the Class.

1.7 “Class Notice” means both the written “Notice” substantially in the form of **Exhibit B**, together with the “Publication Notice” substantially in the form of **Exhibit C**, both as approved by the Court, which shall both include the general terms of the settlement set forth in this Stipulation, the general terms of the Fee and Expense Application referenced in section 8 hereof, and the date of the Final Approval Hearing. The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, due process, any other applicable law, and shall otherwise be in the manner and form approved by the Court.

1.8 “Court” means the United States District Court for the Eastern District of California.

1.9 “Defendants” means the parties identified in sections I and II above as Defendants, including the Regents.

1.10 “Effective Date,” or the date upon which this settlement becomes “effective,” shall be when the Judgment has become Final, as defined below.

1.11 “Final” means the date on which the Court has entered the Judgment, substantially

in the form of **Exhibit D** attached hereto, and the last of the following shall have occurred: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed or, if such a motion is filed, the Judgment is not altered or amended; (ii) the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if an appeal is taken, immediately after (a) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*, or (b) the date of affirmance of the Judgment on appeal and the expiration of time for any further judicial review whether by appeal, reconsideration or a petition for a writ of *certiorari* and, if *certiorari* is granted, the date of final affirmance of the Judgment following review pursuant to the grant. For purposes of this paragraph, an “appeal” shall include any petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this settlement, but shall not include any appeal that concerns only the issue of attorneys’ fees and expenses or incentive payments; any appeal on the issue of attorneys’ fees and expenses or incentive payments shall not in any way delay or affect the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

1.12 “Final Approval Hearing” means the hearing to be held by the Court to consider and determine whether the proposed Settlement of the Litigation as contained in this Stipulation should be approved as fair, reasonable, and adequate, and whether the Judgment should be entered.

1.13 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as **Exhibit D**.

1.14 “Plaintiffs’ Counsel” mean Mark E. Merin, attorneys with the American Civil Liberties Foundation of Northern California, and Meredith Wallis.

1.15 “Litigation” means *Enosh Baker et al., on behalf of themselves and on behalf of all*

persons similarly situated, v. Linda Katehi, et al., United States District Court, Eastern District of California, Case No. 2:12-CV-00450-JAM-EFB.

1.16 “Notice” means written notice to be sent by e-mail substantially in the form of **Exhibit B**, as approved by the Court.

1.17 “Notice Date” means the date that Notice is first sent or published.

1.18 “Publication Notice” means notice substantially in the form of **Exhibit C** to be published in accordance with the Preliminary Approval Order.

1.19 “Released Claims” means any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages, whether compensatory, statutory, special, incidental, consequential, punitive, exemplary or otherwise, injunctive relief, declaratory relief, attorneys’ fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, and whether known or unknown, fixed or contingent, suspected or unsuspected, concealed or hidden, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including Unknown Claims (as defined below), that (i) have been asserted in this Litigation by the Plaintiffs and Class Members or any of them against any of the Released Persons (as defined below), or (ii) could have been asserted in the Litigation or any other forum by the Plaintiffs and Class Members or any of them against any of the Released Persons which arise out of or are based upon or related to the allegations, transactions, facts, matters or occurrences, set forth, or referred to in the Litigation, including, without limitation, claims that the Defendants violated the civil rights of the Plaintiffs and/or Class Members, or injured them in any way on the afternoon of November 18, 2011. Nothing in this release provision shall prevent any person from seeking a certificate and record of detention as provided in California Penal

Code § 851.6, or seeking a finding of factual innocence as provided for in California Penal Code § 851.8.

1.20 “Released Persons” means each and all of the Defendants named in the First Amended Complaint, including but not limited to Annette Spicuzza, as well as the Regents, and their officers, employees, managers, personal or legal representatives, predecessors, successors, agents, attorneys, officials, trustees, as well as any person or entity claimed to have been acting under the authority of, at the direction of, or in concert with the Defendants, directly or indirectly, in any manner whatsoever on November 18, 2011, in connection with the subject matter of the Litigation and/or the Released Claims. The term “Released Persons” includes the City of Davis, its agents, officials and employees, and all individual members of the City of Davis Police Department who were involved in any way with the events on the UC Davis Quad on November 18, 2011.

1.21 “Releasing Parties” means the Representative Plaintiffs and all Class Members, heirs, executors, administrators, agents, legal representatives, assigns and successors, but only to the extent their claims are derived from the claims of Class Members, excluding any Class Members who timely opt out of the Class.

1.22 “Settling Parties” means, collectively, the Defendants, including the Regents, and the Plaintiffs on behalf of the Class.

1.23 “Unknown Claims” means any Released Claims which Releasing Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or might have affected his, her, or its decisions with respect to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and relinquish, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have,

1 expressly waived and relinquished, the provisions, rights, and benefits of
2 California Civil Code § 1542, which provides:

3 **A general release does not extend to claims which the creditor does not**
4 **know or suspect to exist in his or her favor at the time of executing the**
5 **release, which if known by him or her must have materially affected**
6 **his or her settlement with the debtor.**

7 Releasing Parties may hereafter discover facts in addition to or different from
8 those which he, she or it now knows or believes to be true with respect to the
9 subject matter of the Released Claims, but Releasing Parties upon the Effective
10 Date shall expressly, fully, finally, and forever settle and release and each Class
11 Member, upon the Effective Date, shall be deemed to have, and by operation of the
12 Judgment shall have, fully, finally, and forever settled and released any and all
13 Released Claims, known or unknown, suspected or unsuspected, contingent or
14 non-contingent, whether or not concealed or hidden, which now exist, or
15 heretofore have existed, upon any theory of law or equity now existing or coming
16 into existence in the future, including, but not limited to, conduct which is
17 negligent, intentional, with or without malice, or a breach of any duty, law or rule,
18 without regard to the subsequent discovery or existence of such different or
19 additional facts. Plaintiffs acknowledge, and the Class Members shall be deemed
20 by operation of the Judgment to have acknowledged, that the foregoing waiver was
21 separately bargained for and is a key element of the settlement of which this
22 release is a part.

23 2. **Monetary Benefits to Be Provided to the Class**

24 In consideration of the Release set forth in section 9 of this Stipulation and the entry of
25 Judgment on the claims of all Class Members, the Regents will pay the following amounts within
26 15 (fifteen) days of the Effective Date:

27 a. Representative Plaintiffs: Regents will pay the sum of \$630,000.00 (six
28 hundred thirty thousand dollars) to the Representative Plaintiffs, which constitutes \$30,000 for

each of the 21 Representative Plaintiffs, by a single check made payable to the Law Office of Mark E. Merin, Attorney Client Trust Fund, to be distributed to the Representative Plaintiffs by that office. The payment shall be delivered to the Law Office of Mark E. Merin, 1010 F Street, Sacramento, CA 95814, no later than three days following the Effective Date of the settlement. The Parties stipulate and acknowledge that the payments to the Class Representatives are not unduly preferential, and the amounts are justified based on the injuries they allegedly suffered, and the burdens carried by the Class Representatives in commencing and prosecuting the Litigation, including the notoriety attendant on pursuit of the Litigation and the amount of time and effort involved.

b. Other Class Members: To each additional Class Member other than the Representative Plaintiffs who submits an Approved Claim, the Regents will pay the sum of \$20,000 (twenty thousand dollars); provided, however, that if there are more than five total Approved Claims, the amount paid in settlement of each Approved Claim shall be reduced pro rata so that the total amount paid for all Approved Claims does not exceed \$100,000 (one hundred thousand dollars). For example, if there are six Approved Claims, the settlement payment for each such Approved Claim shall be \$16,667 (sixteen thousand, six hundred sixty-seven dollars). The procedure for making such payments is as follows:

(1) Prior to the time that Notice is sent or published, Plaintiffs and the Regents shall each designate an individual to serve as a member of the Administrator. The designated individuals may consult with their respective clients or with other attorneys who are working on this matter in considering the appropriate action to be taken on the claims.

(2) Putative Class Members may submit Claim Forms in accordance with the provisions set forth in the Notice. Within thirty (30) days of the submission of any such Claim Forms, the Administrator shall attempt to agree on whether or not the claim is Approved. If the parties' representatives comprising the Administrator cannot agree, the disputed Claim Forms shall be submitted to Magistrate Judge Edmund F. Brennan, the Magistrate Judge assigned to this action, for final, binding determination. The Magistrate Judge's determination shall be

1 based on the forms and any available evidence, including but not limited to video or photographs
 2 taken on November 18, 2011. Putative Class Members who submit claims shall be notified in
 3 writing whether their claim is Approved or not prior to the date of the Final Approval Hearing.
 4 Putative Class Members who submit Approved Claim Forms shall receive payment of their
 5 claims by check made payable to them and delivered to the addresses specified on their Claim
 6 Forms within fifteen (15) days of the Effective Date of the settlement, unless there are five or
 7 more approved claimants, in which case one check for \$100,000 will be made payable to the Law
 8 Office of Mark E. Merin, Attorney Client Trust Fund, to be distributed to the approved claimants
 9 by that office.

10 3. Additional Class Relief

11 a. For two years following the Effective Date, the Regents will provide
 12 Plaintiffs' attorneys from the American Civil Liberties Union Foundation of Northern California
 13 ("ACLU") an opportunity to review, comment, and provide input on the Davis campus' written
 14 policies, including the Regents' written policies applicable to the campus at Davis, pertaining to
 15 the use of force by police, the handling of student demonstrations, and crowd control. This shall
 16 include a fair and adequate opportunity to review, comment and provide input, prior to their
 17 adoption, on any new or revised written Davis campus policies pertaining to these subjects. The
 18 Regents will reimburse up to \$20,000 (twenty thousand dollars) for reasonable attorneys' fees and
 19 costs incurred by the ACLU in conducting such review, with payment being made within 45 days
 20 from the submission of invoices for time spent by ACLU staff on such review. Any such
 21 invoices shall be sent to the attention of Margaret Wu at the Office of General Counsel and to Jim
 22 Taylor of Sedgwick.

23 b. Within fifteen (15) days of the Effective Date of the settlement, Chancellor
 24 Linda Katehi will cause to be delivered to each of the twenty-one (21) Representative Plaintiffs
 25 and any other putative class members who submit an Approved Claim Form a personal, written
 26 apology for the incident and injuries and damages they suffered as a result thereof.

27 c. As part of the settlement, a Student Affairs representative on the Davis
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campus will provide reasonable assistance and counseling to the Representative Plaintiffs (and any other putative class members who submit an Approved Claim Form) with academic performance issues that allegedly arose as a result of the incident. Plaintiffs hereby acknowledge that under the University of California's system of shared governance, the Academic Senate and the faculty of the University of California are accorded the authority for evaluating student academic performance, and that The Regents make no promise or commitment that any Plaintiff will be granted an exception to policies or will receive a grade change.

4. **Initial Procedural Steps**

a. The Parties will stipulate to the filing of a Second Amended Complaint in which the only named defendant will be the Regents. Defendants Katehi, Hexter, Meyer, Wood, Spicuzza, Pike, Swartwood, and Lee shall not be named as Defendants in the Second Amended Complaint. The Second Amended Complaint will be filed for purposes of entering into and effectuating the settlement set forth in this Stipulation. The Regents waives its immunity from suit under the Eleventh Amendment to the U.S. Constitution for this purpose.

5. **Preliminary Approval**

As soon as possible, and in no event more than five days, after execution of this Stipulation, the Settling Parties shall jointly submit the Stipulation together with its Exhibits to the Court and shall jointly apply for entry of a Preliminary Approval Order substantially in the form set forth in **Exhibit E**, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation, conditional certification of the Settlement Class, appointment of Class Counsel, approval/dissemination of Class Notice, approval of the proposed Claim Form, and entry of an order staying any activities in the Litigation except for activities related to the approval and implementation of the Settlement.

6. **Class Notice**

a. Beginning not more than 14 days after the entry of the Preliminary Approval Order, the Notice of the proposed settlement shall be given in the following manner:

(i) the Regents will cause the text of the Notice substantially in the form attached hereto as

Exhibit B to be sent by e-mail to all students enrolled in one or more classes at the Davis campus during the Fall Quarter of 2011, for whom the Regents have a valid e-mail address; (ii) the Regents shall cause the Publication Notice substantially in the form attached hereto as **Exhibit C** to be published once each in the Davis *Enterprise* and the UC Davis *Aggie*; and (iii) the Regents shall cause copies of the Notice, the Publication Notice, and the Claim Form to be posted online at www.ucdavis.edu. Copies of the Notice and Claim Form shall be sent via electronic or standard class mail to those Class Members who so request.

b. As set forth in the proposed Notice, the putative Class Members shall have 30 (thirty) days to file a Claim Form, or to exclude themselves (“opt out”) of this Settlement and from the Class by timely submitting a request to opt out in accordance with the procedure set forth in the Notice.

c. As set forth in the proposed Notice, objections to the proposed Settlement must be filed not later than 30 (thirty) days after the Notice Date.

7. **Final Approval**

A Final Approval Hearing shall be set no less than seventy-five (75) days after the Court issues its Preliminary Approval Order. The parties jointly request that, at the Final Approval Hearing, the Court approve the settlement of the Litigation and enter Judgment in a form substantially similar to that attached hereto as Exhibit D. At least fifteen (15) days prior to the Final Approval Hearing, Plaintiffs’ Counsel shall submit a Fee and Expense Statement to the Court for an award of attorneys’ fees and costs as set forth in Section 8 below, to be determined by the Court at the Final Approval Hearing.

8. **Plaintiffs’ Counsels’ Attorneys’ Fees and Expenses**

The Regents has agreed to pay, and Plaintiffs’ counsel has agreed to accept, the sum of \$250,000 (two hundred fifty thousand dollars) for all attorneys’ fees and costs incurred in connection with the prosecution of the Litigation and the administration of the settlement. Accordingly, Plaintiffs’ counsel shall submit a Fee and Expense Statement to the Court for an award of attorneys’ fees and costs for all work performed on behalf of the Class, not to exceed,

\$250,000, which application the Defendants shall not oppose. Provided the Court approves the Fee and Expense Statement, the Regents will pay the amount awarded by the Court within 15 (fifteen) days of the Effective Date, payable jointly to the Law Offices of Mark E. Merin, the American Civil Liberties Union Foundation of Northern California and Meredith Wallis.

9. Releases and Bar Order

a. Upon the Effective Date, as defined above, the Releasing Parties shall be deemed to have, and shall have, fully, finally, and forever waived, released, relinquished, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Persons.

b. Upon the Effective Date, the Releasing Parties shall be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Persons. Nothing in this Stipulation shall prevent any person from seeking a certificate and record of detention as provided in California Penal Code § 851.6, or from seeking a finding of factual innocence as provided for in California Penal Code § 851.8.

c. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

d. No person shall have any claim against the Administrator, or any member thereof, based on the administration of this settlement, including but not limited to any determination regarding the approval or disapproval of any claim submitted.

The Parties intend that this Stipulation eliminate all further risk and liability of the Released Persons relating to the Released Claims, and accordingly agree that the Court shall include in the Final Approval Order a Bar Order Provision as follows: "the Releasing Parties are permanently

enjoined from filing, commencing, prosecuting, intervening in, participating in or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order based on any or all Released Claims against one or more Released Persons”

10. Waiver and Covenant not to Sue

Upon the Effective Date, each of the individuals named as Defendants in the First Amended Complaint shall be deemed to have, and shall have, fully, finally, and forever waived, released, and relinquished any claim for malicious prosecution in connection with the Litigation. Each such Defendant covenants that he or she will not institute any claim, lawsuit, arbitration, or proceeding of any nature against Plaintiffs, any Class Member, or Plaintiffs’ Counsel for any act or omission in connection with this Litigation.

11. Conditions of Settlement, Effect of Disapproval

This Settlement is subject to the following conditions:

- a. This Settlement is subject to the approval of the Court as provided in Federal Rule of Civil Procedure 23(e).
- b. In the event that two or more Class Members opt out of the Class in accordance with the terms of the Notice, this Stipulation and the Settlement contemplated hereby shall be voidable at the election of the Regents. In the event that the Regents is entitled to and elects to void this Stipulation for Settlement, the Regents must deliver formal written notice of such election to counsel for all Parties within 14 (fourteen) days after the deadline for Class Members to opt out of the Class.
- c. In the event that the Stipulation is not approved by the Court, is voided by the Regents, or otherwise fails to become effective in accordance with its terms and provisions, the Settling Parties shall be restored to their respective positions in the Litigation as of August 16, 2012. In such event, the terms and provisions of this Stipulation, with the exception of this section and section 4.a hereof, shall have no further force and effect with respect to the Settling Parties and neither this Stipulation nor any submission by any party in connection with the Motion(s) for Preliminary or Final Approval or Application for Attorneys’ Fees and Expenses

or Appeal therefrom, or any related motions or proceedings, may be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

Notwithstanding the foregoing, no order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of any attorneys' fees, costs, or expenses awarded by the Court to any of Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the Stipulation.

12. Miscellaneous Provisions

a. The Settling Parties (a) acknowledge that it is their intent to consummate the Settlement set forth in this Stipulation, and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish and effectuate the terms and conditions of the Stipulation.

b. The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel and with the assistance of a professional mediator.

c. Neither this Stipulation nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Defendants may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on

1 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or
2 reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

3 d. All agreements made and orders entered during the course of the Litigation
4 relating to the confidentiality of information shall survive this Stipulation. The parties to the
5 Litigation shall comply with the stipulated protective order (Dkt. No. 29), relating to the
6 disposition of confidential information and documents.

7 e. All of the exhibits to this Stipulation are material and integral parts hereof
8 and are fully incorporated herein by this reference.

9 f. The Stipulation and the exhibits attached hereto constitute the entire
10 agreement among the parties hereto and no representations, warranties or inducements have been
11 made to any party concerning the Stipulation or its exhibits other than the representations,
12 warranties, and covenants contained and memorialized in such documents. Except as otherwise
13 provided herein, each party shall bear its own costs.

14 g. This Stipulation may be amended or modified only by a written instrument
15 signed by or on behalf of all Settling Parties. Lead Counsel, on behalf of the Class, is expressly
16 authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by the
17 Class pursuant to the Stipulation to effectuate its terms and also is expressly authorized to enter
18 into any modifications or amendments to the Stipulation on behalf of the Class which they deem
19 appropriate.

20 h. Each counsel or other Person executing the Stipulation or any of its
21 exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do
22 so.

23 i. The Stipulation may be executed in one or more counterparts. All executed
24 counterparts and each of them shall be deemed to be one and the same instrument. A complete
25 set of executed counterparts shall be filed with the Court. Signatures of parties transmitted by
26 facsimile or scanned by e-mail ("pdf") are deemed to be equivalent of original signatures of such
27 parties.
28

1 j. The Stipulation shall be binding upon, and inure to the benefit of, the
2 successors and assigns of the Parties hereto.

3 k. The Court shall retain jurisdiction with respect to implementation and
4 enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the
5 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

6 l. This Stipulation and the exhibits hereto shall be considered to have been
7 negotiated, executed and delivered, and to be wholly performed, in the State of California, and the
8 rights and obligations of the parties to the Stipulation shall be construed and enforced in
9 accordance with, and governed by, the internal, substantive laws of the State of California without
10 giving effect to that State's choice-of-law principles.

11 m. This Stipulation was drafted with substantial review and input by all
12 Parties and their counsel, and no reliance was placed on any representations other than those
13 contained herein. The Parties agree that this Stipulation shall be construed by its own terms, and
14 not by referring to, or considering, the terms of any other settlement, and not by any presumption
15 against the drafter.

16 NOW, THEREFORE, without any admission or concession on the part of Plaintiffs of any
17 lack of merit of the Litigation whatsoever, and without any admission or concession on the part of
18 Defendants as to the merit of the Litigation, or as to any liability or wrongdoing whatsoever by
19 Defendants, the foregoing terms are hereby STIPULATED AND AGREED, by and among the
20 Parties, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil
21 Procedure.

22 Respectfully submitted this 26th day of September, 2012.
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1 Dated: September 26, 2012

LAW OFFICE OF MARK E. MERIN

2
3 By: /s/ "Mark E. Merin"

4 Mark E. Merin
Attorneys for Plaintiffs

5 Dated: September 26, 2012

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

6
7 By: /s/ "Alan Schlosser"

8 Alan Schlosser
Michael Risher
Attorneys for Plaintiffs

9
10 Dated: September 26, 2012

11 By: /s/ "Meredith Wallis"

12 Meredith Wallis
Attorneys for Plaintiffs

13 Dated: September 26, 2012

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15 By: /s/ "J. Daniel Sharp"

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18 Dated: September 26, 2012

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21 Nancy J. Sheehan
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